

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-79

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Eliminate
Separate Licensing of End Users
of Specialized Mobile Radio Systems

REPORT AND ORDER

Adopted: August 5, 1992;

Released: August 31, 1992

By the Commission:

I. INTRODUCTION

1. This *Report and Order* amends Part 90 of the Commission's Rules to eliminate separate licensing of end users of Specialized Mobile Radio (SMR) systems in most circumstances. Specifically, we (1) eliminate, with certain exceptions, separate licensing requirements imposed on end users of SMR systems; (2) authorize end users to operate under the terms and conditions of authorizations issued to SMR base station licensees; (3) require that SMR licensees assume responsibility for exercising operational control over mobile and control stations communicating over their base stations; (4) eliminate certain loading reports now required of SMR licensees and instead require loading data only in specified circumstances; (5) calculate mobile loading for trunked SMR systems on the basis of the business records of base station licensees; and (6) relax the requirement to modify trunked SMR system licenses.

II. BACKGROUND

2. SMR systems are private two-way land mobile radio stations authorized in the 806-821/851-866 MHz and 896-901/935-940 MHz bands.¹ They may be either trunked or conventional.² SMR base station licensees are authorized a specified number of frequencies, generally on an exclu-

sive basis, and are permitted to provide a wide variety of mobile communications services to customers, called end users, on a commercial basis. End users are licensed for associated control points, control stations, and mobile radio stations.³

3. On May 5, 1992, we released a *Notice of Proposed Rule Making (Notice)*⁴ proposing elimination of separate end user licensing, modification of the reporting requirements associated with the loading of SMR systems, and relaxation of license modification requirements for trunked SMR systems. After reviewing previous actions simplifying SMR licensing procedures, we noted our past reluctance to eliminate separate end user licensing, primarily because we had found specific proposals inadequate.⁵ We then initiated the instant proceeding on our own motion.

4. Nineteen comments and reply comments were filed in response to the *Notice*.⁶ Private radio users by and large favor the proposal, though some would modify specific aspects, particularly in the areas of SMR licensee responsibility for end user conduct and of procedures for calculating loading data. Commenters representing cellular communications and other common carrier interests, in contrast, uniformly oppose the proposal as compromising the distinction between "private" and "common" carriage. We consider first these challenges to the regulatory status of SMR systems. We then consider, in turn, each of the three specific proposals set forth in our *Notice*.

III. DISCUSSION

5. *Regulatory Issues.* Several commenters assert that the elimination of end user licensing effectively transforms the private radio SMR service into a common carrier service, there allegedly being no significant difference left between the functioning of the two. Hence, these commenters suggest that either common carrier cellular services be permitted the flexibility given private SMR services⁸ or that SMR systems be classified as common carriers.⁹

6. On several recent occasions we have considered the status of land mobile radio services in contexts similar to this one. Each time we have concluded, without qualification, that the relevant test for inclusion in the private land mobile radio service, established by 47 U.S.C. §§ 153(gg) and 332(c)(1), is that a licensee provide mobile communications to eligible users over designated areas of operation, and that the base station licensee not resell interconnected telephone service for profit.¹⁰ We note that our approach adopted here does not affect, much less compromise, this crucial area of distinction between private land mobile and common carrier services. There is

¹ See generally 47 C.F.R. §§ 90.601-90.657.

² Trunked systems, which are more common in the SMR service and generally more spectrally efficient than conventional systems, automatically locate available channels for communication. Conventional systems require users to search manually for an open channel or to wait until a particular channel becomes available for use.

³ Operators of trunked SMR systems are licensed on an exclusive basis and retain control over their frequencies if applicable mobile loading standards are met. 47 C.F.R. § 90.631. Conventional SMR systems are authorized on the basis of a minimum of 70 mobile stations per channel, and licensees that meet this standard are entitled to exclusive use of their channels. 47 C.F.R. § 90.633.

⁴ 47 C.F.R. § 90.655.

⁵ Notice of Proposed Rule Making, PR Docket No. 92-79, 7 FCC Rcd 2885 (1992).

⁶ *Id.* at 2885.

⁷ Comments in this proceeding were due on June 11, 1992. Reply comments were due originally on June 26, 1992, but that date was extended to July 6, 1992, by Order, DA 92-854, released June 25, 1992.

⁸ See, e.g., Comments of McCaw Cellular Communications, Inc.

⁹ See, e.g., Initial Comments of the National Association of Regulatory Utility Commissioners.

¹⁰ See, e.g., Fleet Call, Inc., 6 FCC Rcd 1533, 1537; *recon. dismissed*, 6 FCC Rcd 6989 (1991).

nothing in the Act, the legislative history or in the Commission's policy that would make individual end user licensing a necessary component of private carrier status under the Act. In fact, the Act treats users and licensees as distinct entities. See 47 U.S.C. § 332(c)(1) (referring separately to "users" and "licensees"). *Accord*, H.R. Rep. No. 765, 97th Cong., 2d Sess. 55 (1982), reprinted at 1982 U.S. Code Cong. & Ad. News 2261, 2299; *Telocator Network of America v. FCC*, 761 F.2d 763, 767 (D.C. Cir. 1985).¹¹

7. *Proposal 1: Elimination of Separate End User Licensing.* Section 90.655 of our Rules,¹² requires end users of conventional or trunked SMR systems to license their associated control points, control stations, and mobile radio stations. Each year, pursuant to this requirement, we receive approximately 32,500 applications from end users for new licenses and 7,500 applications for renewal of licenses.

8. Our *Notice* proposed elimination of Section 90.655. End users would operate under the blanket license issued to an SMR base station licensee rather than under their own individual licenses. We proposed further that SMR base station licensees be responsible for exercising operational control over all mobile stations that they authorize to use their base station(s), including assuring compliance with the Federal Aviation Act (FAA) and our implementing Rules,¹³ the National Environmental Policy Act and our implementing Rules, W¹⁴ and all other applicable FCC Rules and Regulations.

9. Commenters agree that eliminating Section 90.655 would save significant end user time, money, and resources, while also reducing substantially the Commission's administrative costs and efforts. At the same time, though, several seek limitations on SMR licensee responsibility for end user conduct. Thus it is suggested that licensees be accountable only for end user conduct of which they have knowledge¹⁵ or over which they have control.¹⁶ And, it is noted, some responsibilities lie solely with the Commission and cannot properly be delegated to others.¹⁷

10. We adopt our proposal, as modified herein. Specifically, with certain exceptions, end user licensing will be eliminated and we will, instead, authorize such operations under a blanket license held by the base station licensee. As we recognized in our *Notice*, base station licensees exercise extensive control over their end users, even to the point of being able to deny them service on their system. Holding base station licensees responsible for end user operations under these circumstances is a natural and appropriate outgrowth of this control.

11. Certain matters of statutory compliance, in particular, those involving FAA restrictions, NEPA and other environmental restrictions, and "quiet zone" restrictions, involve issues of public safety or public policy of overriding importance. As we stated in our *Notice*, very few end user facilities require either FAA or environmental clearance. The Private Radio Bureau's licensing staff estimates that far fewer than one per cent of end user applications involve either FAA or environmental issues. The importance of these issues, however, requires that end user facilities within the scope of these restrictions be subject to closer regulatory scrutiny than those that are not.

12. Therefore, where a proposed end user facility falls within the scope of FAA, environmental, or "quiet zone" restrictions, the end user will be required to file an application with the Private Radio Bureau's Licensing Division and to be separately licensed by the Commission before commencing construction or operation. To this end, each base station licensee must make an initial determination whether an end user's facilities (i) are located in a quiet zone requiring protection pursuant to Section 90.177 of our Rules, 47 C.F.R. § 90.177; (ii) require FAA notification pursuant to Sections 17.7 - 17.17 of our Rules, 47 C.F.R. §§ 17.7 - 17.17, and Part 77 of the Federal Aviation Administration's Rules, 14 C.F.R. Part 77; or (iii) may have a significant environmental effect as defined in Section 1.1307 of our Rules, 47 C.F.R. § 1.1307.¹⁸ If the facilities fall within any of these categories, an end user license will be required. If they do not, no separate licensing is necessary.

13. Base station licensees are authorized to use spectrum resources to conduct a communications business. By obtaining such authorization, the base station licensee assumes responsibility to assure that those using its facilities operate in compliance with our technical and operational rules, including those governing the location of transmitters and antennas. This is a continuing responsibility. If the base station licensee has any questions concerning end user compliance with our Rules, the base station licensee may call any of our field offices or the Private Radio Bureau for assistance, or may require that the end user obtain an authorization from the Commission prior to construction or operation.

14. At the same time, we fully recognize that there are limitations on the licensee's control over certain customer activities.¹⁹ The proper operation of end user facilities is normally the responsibility of the end user. The fact that end users will no longer be separately licensed does not relieve them of their responsibility to comply with the appropriate provisions of Part 90 of our Rules and other federal laws, such as those relating to obscene language

¹¹ We also note that the Commission recently proposed additional flexibility for cellular licensees. See *Notice of Proposed Rule Making and Tentative Decision*, ET Docket No. 90-314, adopted July 16, 1992.

¹² 47 C.F.R. § 90.655.

¹³ See 49 U.S.C. §§ 1301-1557 (1988). See also 47 C.F.R. § 17.7.

¹⁴ See 42 U.S.C. §§ 4321-4370 (1988). See also 47 C.F.R. §§ 1.1301-1.1319.

¹⁵ See, for example, Comments of the American Mobile Telecommunications Association, Inc. (AMTA) at 3-8. AMTA would require SMR base station licensees to take all reasonable and appropriate steps to exercise effective control over end user conduct.

¹⁶ See Comments of Idaho Communications Limited Partnership (ICLP) at 3-6.

¹⁷ Comments of the Council on Environmental Quality (CEQ), directed toward the provisions of NEPA.

¹⁸ See also 47 C.F.R. § 1.1312 (requiring prior Commission authorization for construction of facilities that may have a significant effect on the environment). As noted by CEQ, any Commission grant of such an authorization would only be after Commission review of the applicant's environmental assessment and, if necessary, preparation and consideration of an environmental impact statement. See 47 C.F.R. §§ 1.1307, 1.1308, 1.1311, 1.1314, 1.1315, 1.1317, 1.1319.

¹⁹ See, e.g., 47 C.F.R. § 22.912, governing cellular radio oper-

and drug related activities.²⁰ To the contrary, we wish to make clear that end users who violate our Rules or other federal laws are subject to forfeitures under Section 503 of the Communications Act, 47 U.S.C. § 503, other administrative sanctions, and criminal prosecution. To the extent that the base station licensee has knowledge of, yet tolerates a rule violation by an end user operating pursuant to its license, the base station licensee may also be held responsible. In considering enforcement action against base station licensees, we will, of course, take into account the nature of the misconduct and other relevant equitable factors.²¹

15. We proposed in our *Notice* to develop a check-list for base station licensees to use to determine end user compliance with FCC, FAA, and environmental rules. We sought industry guidance as to whether this would be useful and, if so, what should be included on the check-list. Several commenters responded to this query, and their suggestions have been most helpful.²² We have decided on reflection, however, to direct the staff to use the comments and any further input from industry to develop and make available an unofficial check-list. This decision reflects our concern that a Commission-approved checklist might be viewed by base station licensees as a substitute for their own diligence and effort.²³ We want to emphasize that the use of such a check-list by the SMR base station licensee will not, alone, meet a licensee's obligations. Therefore, we are not adopting, and we do not intend to adopt in the future, a check-list for SMR base station licensees.

16. Therefore, we are adopting a modified version of our proposal, and, with certain exceptions, are eliminating separate end user licensing and allowing end users to operate under the license issued to the SMR base station operator. When FAA, environmental, or "quiet zone" restrictions apply, a separate end user license will continue to be required.²⁴ The SMR base station licensee is responsible for

assuring that end users comply with all applicable FCC Rules and Regulations with respect to mobiles and control facilities and operations that access its system.²⁵

17. Proposal 2: *Loading Data and Filing Requirements for Licensees of Trunked Specialized Mobile Radio Systems*. Our *Notice* proposed modifying the reporting requirements associated with loading, though not the actual loading requirement itself. Specifically, we proposed to eliminate current Rules requiring base station licensees to submit mobile loading reports at particular intervals,²⁶ and to require instead that they submit loading data only when applying for authorizations for which loading is a prerequisite.²⁷

18. With respect to the composition of mobile loading reports, we proposed that loading data comprise the average number of mobiles and control stations operating on a licensee's system on the first business day of the month for the six month period immediately preceding the filing of an application. The average would be calculated according to the licensee's business records during the six month period and reported on the appropriate application form. Business records could constitute invoices, customer service agreements, customer lists, or any other type of record kept in the ordinary course of business. We would not require these records with the application itself, but could require licensees to provide them to substantiate loading figures at a later date.

19. While our proposal to eliminate periodic loading reporting requirements drew general agreement, our suggested method of calculating loading was widely opposed. Commenters found it more burdensome and restrictive than the existing method, in which loading is determined on the basis of conditions existing at the time an application is filed.²⁸ We are not satisfied that our existing method of demonstrating loading produces the most reliable information, however. A snapshot of loading at a single point in time may not necessarily accurately reflect real

ations.

²⁰ To be eligible for a license issued by the Commission, applicants must certify that neither the applicant nor any party to the application is subject to denial of Federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181, 21 U.S.C. § 853(a)(d)(1). See 47 C.F.R. § 1.2001-1.2003. End users whose facilities do not involve antenna, environmental or quiet zone issues will operate pursuant to the blanket authority of the SMR base station license. Thus, because they do not involve applications or the issuance of individual licenses by the Commission, like cellular radio users, they are not covered by Section 5301. Nevertheless, we are sensitive to the possibility that end users operating under the blanket authority of an SMR license could use the facilities in the furtherance of illegal drug activities. Should an SMR base station licensee gain knowledge that a potential end user falls within the scope of Section 5301, the SMR licensee should deny the end user service. Furthermore, should the SMR base station licensee discover that one of its end users is using its facilities in illegal drug trade, we would expect the licensee to report such activities to the appropriate authorities.

²¹ See, e.g., *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695(1991), on recon., FCC 92-212, released June 4, 1992. In addition, we note that end users of SMR systems that have control stations that fall within the scope of FAA, environmental, or "quiet zone" restrictions (See paras. 11-12) but do not obtain a proper Commission license cannot be considered to be operating under the license of the SMR base station operator and could themselves be subject to forfeiture for unlicensed operation.

²² These commenters include AMTA, Fleet Call, Inc. and E. F. Johnson.

²³ We would not, for example, wish to suggest that a licensee that filled out a check-list for each end user had thereby fully satisfied its obligation to exercise effective operational control.

²⁴ Licenses of existing end users will cancel upon expiration. These end user licensees should not apply for renewal unless they are required to obtain a license under the rules adopted here. Subsequent to the effective date of this *Report and Order*, no applications to renew SMR end user licenses that no longer require separate licensing will be granted.

²⁵ The SMR base station licensee must, for example, know the location of all control stations operating on its system and be prepared to make this information available to the Commission on request.

²⁶ Section 90.651(a) requires licensees of trunked SMR systems to file mobile loading data annually and at renewal.

²⁷ These include applications for additional channels to expand an existing system or to construct a new system within 40 miles of a licensee's existing system--Sections 90.627(b)(2), 90.623(d), 90.631(c) and 90.611(d)--and applications to renew the license of a trunked system licensed before June 1, 1993, located in a waiting list area--Section 90.631(b). With respect to renewal of trunked systems authorized prior to June 1, 1993, we are taking this opportunity to modify our rules to conform to our policy of requiring a demonstration of loading only at the first renewal of an SMR base station license unless the system license has been subsequently modified to include additional channels.

²⁸ See, e.g., Comments of AMTA at 10-12, Comments of Fleet Call at 9, Comments of NABER at 4-5.

system loading.²⁹ Therefore, we think it prudent to seek added assurance of accuracy by requiring an average of several separate loading figures. We are, accordingly, adopting our proposal to change the loading demonstration to the average loading on the first business day of the month for each of the six months prior to the date on which the application requiring a showing of loading is filed, based on the business records of the SMR base station licensee.³⁰

20. We recognize that licensees may achieve the loading necessary either to retain channels or to obtain additional channels near the end of their license term or in the last month or two of the six-month averaging period. The six-month averaging method of calculation may not, therefore, accurately show the number of mobiles and control stations operating on their system. In those unusual situations where the six-month averaging period does not accurately reflect the number of mobiles and control stations on their systems, we will consider showings of special circumstances warranting different methods of calculation. If such special showings indicate, for example, that a smooth business growth is present, or that the licensee recently obtained a customer with a large fleet, we will consider the loading requirements to be met. Sudden jumps in loading, however, may raise a substantial and material question of fact that could affect the licensee's qualifications to remain a licensee. For instance, a large number of mobile units being moved from one system to another like a swarm of bees near the end of the license term to avoid channel takebacks could call into question the operator's qualifications to remain a licensee.

21. The new rules rely on standard business records that licensees should already be keeping in the ordinary course of business. Given that loading figures may be taken from ordinary business records, we do not believe that their compilation will be unduly burdensome to licensees.³¹ While our proposal will impose a longer waiting period than now exists between the time loading requirements are met and the time an application for additional frequencies may be filed, the difference between our loading requirements and actual system capacity, especially for trunked

systems, should provide most licensees with sufficient capacity to accommodate extra customers for this brief time.³²

22. Some commenters³³ suggest a requirement that loading data be submitted with an affidavit attesting to its accuracy. They suggest further that licensees found to have submitted unsubstantiated or false data be required to wait six months before seeking expansion of their systems.³⁴ We will not adopt these suggestions. There is a statutory obligation to deal truthfully with the Commission at all times and in all matters.³⁵ We need no formal oath to impose standards of honesty and candor upon our licensees. As for the proposed six-month prohibition on new applications, it is both unrelated to the offense of misrepresentation and *inadequate* for so serious an infraction. As we stated in our *Notice*, should we find that a licensee has falsely certified loading, we can impose a variety of available sanctions, including prosecution under Section 1001 of Title 18 of the United States Code.³⁶

23. *Proposal 3: Relaxation of Requirement for Trunked Specialized Mobile Radio Licensees to Modify Licenses.* We proposed that both trunked and conventional SMR licensees continue to be subject to the Section 90.135(a)(5) requirement to modify licenses for a change in the location or number of base stations. On the other hand, we proposed to exempt licensees of trunked SMR systems from the requirement of Section 90.135(a)(5) that they modify their licenses when there is a change in the location or number of fixed, control or mobile transmitters. With the elimination of end user licensing, SMR base station licensees would bear total responsibility for compliance with this rule, a responsibility that we found would be very burdensome to them. At the same time, we noted, there is no reason for us to know on a daily basis whether the number of fixed, control or mobile transmitters on a trunked SMR system had changed. It is sufficient for us to receive loading information when loading is at issue in connection with a particular application.

24. In contrast, because conventional channels are available for shared use, we found it necessary to know how many mobiles are operating on a channel before authoriz-

²⁹ The American Petroleum Institute (API) suggests, for example, that the snapshot method could be used to justify expansion of more than one SMR system based on the same mobile units by moving the mobiles from the business records of one system to another. Reply Comments of API at 3.

³⁰ We will credit individual SMR systems with all end users in their business records, including those end users who do business with more than one system in their area. At the same time, we will hold SMR base station licensees responsible for all end users actually communicating over their station, even if an end user is licensed to other stations as well, or is licensed exclusively to another SMR system but is using this one pursuant to a roaming arrangement.

³¹ We will, as AMTA requests, permit licensees "substantial latitude" in the selection of business records, Comments of AMTA at 10. Licensees may request confidentiality of specific financial arrangements. See 47 C.F.R. § 0.459; Comments of the National Association of Business and Educational Radio, Inc. (NABER) at 4. In fact, this new procedure should be less burdensome to the SMR base station licensee because that licensee will no longer have to check and verify system loading as reflected on the Commission's loading card(s) for each SMR system. The verification process entailed obtaining a copy of the

manual records on SMR mobile loading maintained in our Gettysburg Licensing Division and then checking each entry against the SMR customer list in its business records.

³² RAM Mobile Data USA Limited Partnership (RMD) urges that nationwide SMR networks require somewhat different standards for calculating loading than do local systems. While we find potential merit in its position, the special needs and requirements of nationwide systems is a subject beyond the scope of this proceeding.

³³ Comments of the American Petroleum Institute (API) at 6-8, Comments of the Special Industrial Radio Service Association, Inc. (SIRSA) and the Council of Independent Communication Suppliers (CICS) at 7-8.

³⁴ Section 90.631(b) imposes such a six-month penalty upon licensees whose channels are recovered at the end of the first license term for failure to meet applicable loading requirements.

³⁵ See, e.g., Section 1.17 of our Rules, and 18 U.S.C. § 1001.

³⁶ This provision allows *inter alia* for fines of not more than \$10,000 or imprisonment for not more than five years, or both, for persons making willful false statements or representations to an agency of the United States. See also 47 U.S.C. §§ 312(a)(license revocation), 503(b)(civil forfeitures).

ing additional mobiles on the same channel. Thus we proposed that conventional SMR systems remain under the provisions of Section 90.135(a)(5).

25. We received no comments opposing these proposals. We therefore adopt them as presented.

IV. CONCLUSION

26. We are adopting rules in this proceeding that will substantially reduce the administrative burden on SMR end users, SMR base station licensees, and the Commission. A part of our regulatory review program, the streamlined procedures being implemented by this *Report and Order* eliminate unnecessary paperwork and, in so doing, should help improve the operating flexibility and efficiency of the SMR industry.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

Need and purpose of this action:

27. The Commission is adopting this *Report and Order* to eliminate a substantial burden on the public, reduce administrative costs and to improve government efficiency by removing the requirement that most end users of trunked and conventional SMR systems obtain individual licenses.

Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

28. No comments addressed our Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected:

29. We considered an alternative regarding the method of calculating loading data and rejected it for the reasons discussed above in paragraphs 18-20.

VI. ORDERING CLAUSES

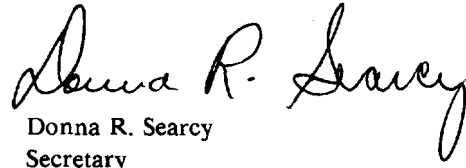
30. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r) and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 332(a)(2), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in Appendix C below.

31. IT IS FURTHER ORDERED that this *Report and Order* will be effective [thirty days after publication in the Federal Register].

32. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

33. For information regarding this *Report and Order*, contact Myra Kovey, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-6497.

FEDERAL COMMUNICATIONS COMMISSION


Donna R. Searcy
Secretary

APPENDIX A

Following is a list of those filing comments in response to the Notice in PR Docket No. 92-79:

American Mobile Telecommunications Association
N(AMTA)
American Petroleum Institute (API)
California Public Utilities Commission and the People
of the State of CA (California)
Cellular Telecommunications Industry Association
(CTIA)
Contel Cellular (Contel)(joint with GTE)
Council of Independent Communication Suppliers
(CICS) (joint with SIRSA)
Council on Environmental Quality (CEQ)
E. F. Johnson
Fleet Call
GTE Mobilnet (GTE)(joint with Contel Cellular)
Idaho Communications Limited Partnership (ICLP)
McCaw Cellular Communications (McCaw)
National Association of Business and Educational Radio
(NABER)
National Association of Regulatory Utility
Commissioners (NARUC)
RAM Mobile Data USA (RMD)
Special Industrial Radio Service Association
(SIRSA)(joint with CICS)

APPENDIX B

Following is a list of those filing reply comments in response to the Notice in PR Docket No. 92-79:

American Mobile Telecommunications Association
American Petroleum Institute
Fleet Call
National Association of Business and Educational Radio
RAM Mobile Data USA

APPENDIX C

Title 47 of the Code of Federal Regulations, Part 90, is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 331, 48 Statutes, as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. 47 C.F.R. § 90.651(a) is removed and reserved.
3. 47 C.F.R. § 90.655 is revised to read as follows:

§ 90.655 Special licensing requirements for Specialized Mobile radio systems.

End users of conventional or trunked Specialized Mobile Radio systems that have control stations that require FAA clearance, as specified in Subpart B of Part 17 of our Rules, 47 C.F.R. §§ 17.7 - 17.17, or that may have a significant environmental effect, as defined by § 1.1307, or that are located in a "quiet zone", as defined by Section 90.177 of our Rules, 47 C.F.R. § 90.177, must be individually licensed for such control stations prior to construction or operation. All other end users' operations will be within the scope of the base station licensee. All end users, however, continue to be responsible to comply with Part 90 of our Rules and other federal laws.

4. A new section 90.656 is added as follows:

§ 90.656 Responsibilities of base station licensees of Specialized Mobile Radio systems.

(a) The licensees of base stations that provide Specialized Mobile Radio service on a commercial basis for the use of individuals, Federal government agencies, or persons eligible for licensing under either subparts B, C, D, or E of this part will be responsible for exercising effective operational control over all mobile and control stations that communicate with the base station. The base station licensee will be responsible for assuring that its system is operated in compliance with all applicable rules and regulations.

(b) Customers that operate mobile units on a particular Specialized Mobile Radio system will be licensed to that system. A customer that operates temporarily on more than one system will be deemed, when communicating with the other system, to be temporarily licensed to the other system and for that temporary period, the licensee of the other system will assume the same licensee responsibility for the customer's mobile station(s) as if the customer's stations were licensed to that other system.

5. A new section 90.658 is added to read as follows:

§ 90.658 Loading data required for base station licensees of trunked Specialized Mobile Radio systems to acquire additional channels or to renew trunked systems licensed before June 1, 1993.

(a) A base station licensee of a trunked Specialized Mobile Radio system that applies for additional channels to expand an existing system or to construct a new system within 40 miles of its existing system, or a base station licensee of a trunked system applying for its first renewal in a waiting list area for a system licensed before June 1, 1993 must identify on the appropriate application form the number of mobiles and control stations loaded on its system as calculated in paragraph (b) of this section.

(b) The number described in paragraph (a) of this section must be calculated by averaging the number of mobiles and control stations operating on a li-

censee's system on the first business day of each of the six months immediately preceding the filing of an application and must be based on the licensee's business records for that period. Alternative calculations will be permitted upon good cause showings of special circumstances.

(c) Business records may constitute invoices, customer service agreements, customer lists or any other type of record kept in the ordinary course of business.

(d) The FCC will use the loading data required by this section to determine whether the licensee's existing system has a sufficient number of mobiles as required by our Rules to qualify for additional channels or for the first renewal of trunked systems licensed before June 1, 1993.

6. A new section 90.659 is added to read as follows:

§ 90.659 Change in number or location of base stations or transmitters.

(a) Licensees of trunked Specialized Mobile Radio systems are exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations.

(b) Licensees of conventional Specialized Mobile Radio channels are not exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations.

(c) Licensees of trunked and conventional Specialized Mobile Radio systems are not exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of base stations.